

OFFICIAL

Docket Number: 41570

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
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JAN 12 2004

In re Application of: Myers et al.

Examiner: Hope A. Robinson

Group Art Unit: 1653

Serial No.: 09/886,271

I hereby certify that this correspondence
is being facsimile transmitted to the USPTO
number 703-872-9306 on January 12, 2004

Filed: June 22, 2001

For: NON-GENETIC-BASED PROTEIN
DISEASE MARKERSby John E. Tarcza
John E. Tarcza

Reg. No. 33,638

RESPONSE TO REQUIREMENT FOR RESTRICTIONMail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 12, 2004

Dear Sir:

In response to the Restriction Requirement mailed December 23, 2003, Applicants hereby elect with traverse Group I, which includes claims 1-12, for examination on the merits. This election is timely filed.

One should note that a patent with 55 claims is not unusual, particularly in the field of biotechnology. However, the examiner has asserted excessively that no fewer than 15 different inventions are found in these claims.

Groups I, II and III should be considered together because they have essentially the same search and should involve the same issues. For Example the claims of Group II are dependant on the claims of Group I and should not be a burden on the examiner to examine

Myers et al.
Serial No.: 09/886,271
Page 2 of 2

both groups together. Groups I and III differ primarily in the individual sample being tested. Whether the disease state is being diagnosed initially or being monitored subsequently involves the same basic concept of measuring the protein markers for that disease state. Thus, the search and patentability issues for Group I and III would be expected to be the same or at least highly overlapping.

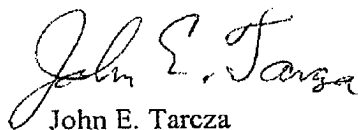
All three of these Groups I, II and III relate to the measurement of protein markers as a proxy for five specific disease states. This represents a unifying underlying concept, which will become apparent to the Examiner as examination proceeds. Accordingly, Groups I, II and III should be considered together.

The thrust of the elected invention relates to protein markers that are found in five specific disease states. As the other groups pertain to the general concept with various modifications extending from the basic discovery, all of the claims should be examined together and remain in the application for later rejoinder.

The commissioner hereby is authorized to charge payment of any fees under 37 CFR § 1.17, which may become due in connection with the instant application or credit any overpayment to Deposit Account No.500933.

Respectfully submitted,

Date: January 12, 2004


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